

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>ALEX E. RINEHART, On Behalf of Himself And All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>LEHMAN BROTHERS HOLDINGS INC., RICHARD S. FULD, JR., MICHAEL L. AINSLIE, JOHN F. AKERS, ROGER S. BERLIND, THOMAS H. CRUIKSHANK, MARSHA JOHNSON EVANS, SIR CHRISTOPHER GENT, ROLAND A. HERNANDEZ, HENRY KAUFMAN, JOHN D. MACOMBER, ERIN M. CALLAN, WENDY M. UVINO, THE EMPLOYEE BENEFIT PLANS COMMITTEE, and JOHN DOES 1-10,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 08cv5598</p>
<p>MONIQUE MILLER FONG, On Behalf of Herself And All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>LEHMAN BROTHERS HOLDINGS INC., RICHARD S. FULD, JR., MICHAEL L. AINSLIE, JOHN F. AKERS, ROGER S. BERLIND, THOMAS H. CRUIKSHANK, MARSHA JOHNSON EVANS, SIR CHRISTOPHER GENT, JERRY A. GRUNDHOFER, ROLAND A. HERNANDEZ, HENRY KAUFMAN, JOHN D. MACOMBER, ERIN M. CALLAN, WENDY M. UVINO, THE EMPLOYEE BENEFIT PLANS COMMITTEE, and JOHN DOES 1-10,</p>	<p>Civil Action No. 08-cv-6282</p>

**PLAINTIFFS' JOINT MOTION TO CONSOLIDATE ERISA
CASES, APPOINT INTERIM CLASS CO-COUNSEL, AND
FOR ENTRY OF PRETRIAL ORDER NO. 1**

Plaintiffs Alex E. Rinehart and Monique Miller Fong (the “Plaintiffs”), by and through their undersigned counsel, respectfully move to consolidate these related ERISA cases, to appoint Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”) and Gainey & McKenna as interim class co-counsel, and for the entry of Pretrial Order No. 1. In support of their motion, Plaintiffs aver as follows:

1. On June 20, 2008, Plaintiff Rinehart filed a complaint against Lehman Brothers Holdings, Inc. (“Lehman” or the “Company”) and certain Lehman executives and employees, collectively, “Defendants,” fiduciaries of the Lehman Brothers Savings Plan (the “Plan”), a defined contribution plan established and/or sponsored by Lehman as a benefit for its employees. The complaint was filed by Plaintiff Rinehart individually, on behalf of the Plan, and as a representative of a proposed Class of Plan participants and beneficiaries.

2. On or about July 11, 2008, Plaintiff Fong also filed a complaint against Defendants, individually, on behalf of the Plan, and as a representative of a proposed Class of Plan participants and beneficiaries.

3. Plaintiffs’ claims arise from, *inter alia*, the failure of the Defendants-fiduciaries of the Plan to act solely in the interest of the Plan’s participants and beneficiaries and to exercise the care, skill, prudence, loyalty and diligence in administering the Plan and investment of its assets mandated under §§ 404 and 405 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1104 and 1105. More specifically, Plaintiffs allege, *inter alia*, that the Defendants-fiduciaries violated their fiduciary obligations by:

- a. failing to properly monitor the Plan and the committee(s) charged with the administration of the Plan and investment of its assets;

- b. failing to prudently manage the assets of the Plan by continuing to acquire and maintain existing shares of Lehman stock for the Plan under circumstances in which Lehman stock was a plainly unsuitable and imprudent investment option for the Plan and its participants; and
- c. enabling their co-fiduciaries to commit violations of ERISA and, with knowledge of these breaches, failing to make reasonable efforts to remedy these breaches.

4. Plaintiffs seek relief pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a). Plaintiffs allege, *inter alia*, that Defendants are responsible for restoring losses sustained by the Plan as a result of Defendants' breaches of their fiduciary duties.

5. The actions contain similar allegations and seek the same relief on behalf of the Plan and an identical class. It is also likely that additional actions containing similar allegations and seeking the same relief on behalf of an identical class may be filed. Therefore, in accordance with the *Manual for Complex Litigation* (4th ed. 2004) (the "*Manual*"), it is appropriate for the Court to enter an Order setting forth procedures for the management of these cases and appointing a leadership structure for plaintiffs' counsel. *See also* FED. R. CIV. P. 23(g)(2)(A).

6. Plaintiffs respectfully move this Court for an Order formally consolidating these ERISA cases with each other as well as with any future ERISA actions that may be filed, and setting forth a procedure for the efficient management of these cases, including the appointment of a leadership structure for plaintiffs' counsel.

7. In accordance with the recommendations of the *Manual* and FED. R. CIV. P. 23(g)(2)(A), Plaintiffs submit for the Court's consideration a proposed form of Pretrial Order

No. 1, which provides for, *inter alia*: the consolidation of the above-captioned actions and any substantially similar actions subsequently filed in or transferred to this District; the designation of a Master File Docket number; the establishment of efficient procedures for the filing and docketing of papers with the Clerk of this Court; the appointment of Wolf Haldenstein and Gainey & McKenna as Interim Class Co-Counsel for all ERISA plaintiffs and the proposed class; and a preliminary schedule for these proceedings.

8. Wolf Haldenstein and Gainey & McKenna will coordinate and organize the ERISA plaintiffs and proposed class in the conduct of this litigation, and will ensure that the interests of ERISA plaintiffs and the proposed class are represented in the prosecution of this action. Co-Counsel respectfully submit that the proposed leadership schedule will be appropriate for the above-captioned action and any others arising out of the same operative facts.

9. Plaintiffs respectfully submit an accompanying Memorandum of Law in support of their motion.

Dated: July 11, 2008

Respectfully submitted,

GAINEY & McKENNA

/s/ Thomas J. McKenna

Thomas J. McKenna
295 Madison Avenue
New York, NY 10017
Tel: (212) 983-1 300
Fax: (212) 983-0383

*Attorneys for Plaintiff Rinehart and
Proposed Interim Class Co-Counsel*

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

/s/ Mark C. Rifkin

Mark C. Rifkin
Scott J. Farrell
270 Madison Ave.

New York, NY 10016
Tel: (212) 545-4600
Fax: (212) 545-4653

***Counsel for Plaintiff Monique Miller Fong and
Proposed Interim Class Co-Counsel***

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to registered CM/ECF participants. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: N/A.

/s/ Noemi Escarment
Noemi Escarment

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